

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, 18-CR-204 (NGG)  
4 Plaintiff, United States Courthouse  
5 -against- August 21, 2018  
6 CLARE BRONFMAN, 2:00 p.m.  
7 Defendant.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL APPLICATION  
10 BEFORE THE HONORABLE NICHOLAS G. GARAUFI  
11 UNITED STATES SENIOR DISTRICT JUDGE

12 APPEARANCES

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PROCEEDINGS

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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise. Criminal cause for  
3 bail application hearing. Case Number 18-CR-204, U.S.A. v  
4 Clare Bronfman.

5 Counsel, please state your appearances for the  
6 record.

7 THE COURT: You may be seated in the back.  
8 Appearances.

9 MS. PENZA: Thank you, Your Honor. Moira Kim Penza,  
10 Tanya Hajjar and Karin Orenstein for the United States. Good  
11 afternoon, Your Honor.

12 MS. NECHELES: Susan Necheles and Kate Cassidy for  
13 Ms. Bronfman, who is here as well, Your Honor. Good  
14 afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 All right. I understand that the financial package  
17 of \$50 million in assets has been completed; is that correct?

18 MS. PENZA: It is, Your Honor.

19 THE COURT: And in defense counsel's letter of  
20 August 20th, there's a chart which sets forth the figures; is  
21 that correct?

22 MS. PENZA: That's correct, Your Honor. I'm just  
23 going to confirm.

24 THE COURT: I can't hear you.

25 MS. PENZA: I'm sorry, Your Honor. I was going to

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1 have Ms. Orenstein confirm that. I've looked at it and I  
2 believe that is correct.

3 THE COURT: Ms. Orenstein?

4 MS. ORENSTEIN: Yes, that's correct. I've been  
5 working with defense counsel to make sure that all the  
6 documents that were necessary were coming in. They did come  
7 in. Everything's been filed and is in order, as far as the  
8 government's concerned.

9 THE COURT: All right. And you agree?

10 MS. NECHELES: Yes, Your Honor.

11 THE COURT: Okay, so that issue has been resolved.

12 And what other issues did we have from the last  
13 meeting that we had weeks ago?

14 MS. NECHELES: Your Honor, if I could.

15 I believe that at the last meeting Your Honor left  
16 open two issues. You said that in the interim, until we  
17 fulfilled the conditions, that you were going to place  
18 Ms. Bronfman under house arrest and with GPS monitoring and,  
19 in addition, you would restrict the people that she could  
20 associate with.

21 But you told Your Honor -- you told us that we could  
22 raise that again today after we fulfilled all the conditions.

23 We worked with the government, Ms. Orenstein was  
24 very good to work with. We were able to get everything done,  
25 it was complicated but we appreciate her help in that we were

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1 able to get all of those conditions satisfied at this point.

2 So I would like to address --

3 THE COURT: Let's me just hear from the government  
4 on that particular issue because it seems to be a bone of  
5 contention.

6 I've just read the government's latest submission  
7 which arrived a few minutes ago.

8 Have you seen it?

9 MS. NECHELES: Yes.

10 THE COURT: Oh, good.

11 MS. PENZA: Your Honor, would you like the  
12 government to approach?

13 THE COURT: Come on up, let's have everybody up  
14 here.

15 MS. PENZA: Okay, Your Honor.

16 Yes, I apologize for the late filing, we were  
17 responding to the filing we received yesterday afternoon. We  
18 have --

19 THE COURT: I'm not being critical of anybody. I'm  
20 just saying when I received it. Not that it was late or --  
21 everyone seems to be filing at last minute, so why should you  
22 be any different.

23 Go ahead.

24 MS. PENZA: Understood, Your Honor. I'm sorry, Your  
25 Honor, what exactly are you...

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1 THE COURT: Well, the question of whether the terms  
2 of Ms. Bronfman's release were temporary in nature and not --  
3 and would be rereviewed and reconsidered at this meeting.

4 MS. PENZA: Your Honor, specifically as to the home  
5 detention, Ms. Necheles certainly did reserve her right at the  
6 time once the security had been met to raise that.

7 As to the association issue, that I recall there  
8 being a discussion about limiting the provision and hopefully  
9 the parties agreeing to it. But, again, it was relatively up  
10 in the air. So the government would not say that either of  
11 those were solidified, even in the government's view.

12 So I think both of those are open issues, although  
13 we certainly never intended there to be an understanding that  
14 there would be a provision such that Ms. Necheles is now  
15 suggesting. It always seemed that the parties were to be  
16 contemplating some way of narrowing the original association  
17 provision, which stated that the defendant would have no  
18 contact with any current or former members of NXIVM.

19 There was an objection regarding what constitutes a  
20 member of NXIVM. We then worked to propose something  
21 different, and I believe Ms. Necheles is now seeking a  
22 provision that only limits Ms. Bronfman's communication with  
23 codefendants except in the presence of counsel.

24 MS. NECHELES: Your Honor, maybe it would be helpful  
25 for me just to address first one and the government can

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1 respond and then...

2 So I think, if I could address the home detention  
3 first, and we can deal with the association second. Because I  
4 think the association might be a little more complicated.

5 Your Honor, what we are proposing at this point is  
6 essentially that Ms. Bronfman be allowed out of the house  
7 during the daytime with the restriction of where she could go.  
8 She would be restricted to the terms of what Your Honor has  
9 said of where she is able to travel to.

10 And my understanding with having spoken to pretrial  
11 services, including today, is that what we are proposing is  
12 totally technologically feasible, and there's one of the three  
13 ways that this is commonly done by pretrial services.

14 So we'd have a curfew, and there would be a  
15 restriction on the area she could travel. And if she traveled  
16 outside that area, she would continue to have her GPS bracelet  
17 monitor on her ankle. If she traveled outside of that area or  
18 anywhere near the ports or an airport, there would be an alarm  
19 that went off immediately at services.

20 They would not be monitoring her moment by moment  
21 where she is, but they would have a curfew that she will be  
22 in.

23 One of the pretrial officers is in court here today  
24 and I spoke to her. I saw that in the government's letter  
25 they said that this was not feasible.

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1 I asked pretrial, maybe the government didn't  
2 understand what I was suggesting because I am told that this  
3 is feasible, technologically feasible.

4 We believe that this would be a sufficient  
5 restriction to prevent her from fleeing; to be home every  
6 night, if she left Manhattan, if she left the area, they would  
7 have an immediate alarm.

8 The only difference really would be that the area  
9 she's allowed to be in is a little bit bigger. Right now  
10 she's allowed to be in her home. Then it would be Manhattan  
11 and Brooklyn, Queens essentially. But if she stepped out of  
12 those area or stepped into an airport or stepped into one of  
13 the ports, the alarm would immediately sound for pretrial.

14 MS. PENZA: Your Honor, I also spoke to Ms. Quijije,  
15 I believe it is, who is in the courtroom today.

16 THE COURT: Why doesn't she come up.

17 Good afternoon, ma'am. Please state your  
18 appearance.

19 PRETRIAL SERVICES OFFICER: Good afternoon, Your  
20 Honor. Jeannine Quijiji, pretrial services.

21 THE COURT: Welcome.

22 PRETRIAL SERVICES OFFICER: Thank you.

23 MS. PENZA: And, Your Honor, obviously, Ms. Quijije  
24 is now here, but the government did speak to her today, and  
25 our position was not that it was technologically not feasible.

1 My understanding, from my conversation just so the Court  
2 understands the record that the government was making, was  
3 that practically it's not feasible.

4 In order to effectively monitor the defendant, this  
5 is not something that is routinely, if ever, done where there  
6 would be a certain location where they would be monitoring  
7 her. Usually there is curfew, or there is home detention.

8 Home detention enables pretrial services to expect  
9 to know where she is most times, and then the government in --  
10 again, trying to fashion the least restrictive conditions that  
11 we believe would mitigate the risk of flight, proposed that  
12 there be a certain period of time each day or not -- excuse  
13 me, Your Honor, a certain period of time where Ms. Bronfman  
14 would have more freedom beyond her home.

15 When I spoke to Ms. Quijije about that, she informed  
16 me that three days a week of 90 minutes would be a reasonable  
17 period that pretrial could effectively monitor and make sure  
18 that Ms. Bronfman did stay within the designated area.

19 THE COURT: Is that right?

20 PRETRIAL SERVICES OFFICER: That's correct, Your  
21 Honor, under home detention.

22 THE COURT: Under home detention.

23 PRETRIAL SERVICES OFFICER: Correct.

24 THE COURT: I see.

25 MS. NECHELES: Your Honor, what we're proposing is a



1 curfew, which I understand is a common form that pretrial does  
2 when there is no realistic harm to others. There is no reason  
3 here that home detention is required as opposed to GPS  
4 monitoring.

5           What we are saying is we believe that the least  
6 restrictive way of ensuring that Ms. Bronfman appear is a  
7 curfew, which is technologically available, it's something  
8 that is it commonly done, as I understand it; and would  
9 immediately notify pretrial if she left the designated area.  
10 It just gives her a little bit of a larger designated area.

11           As you can imagine being in a one -- in someone's  
12 one-bedroom apartment for months, it's difficult, it's very  
13 restrictive, and so we're asking for a less restrictive. This  
14 is a woman who is used running, jogging, exercising and would  
15 like to be able to do that within Manhattan.

16           MS. PENZA: Your Honor, the government, in light of  
17 the case, in light of the extraordinary flight risk of the  
18 defendants, we don't believe that's appropriate in order to  
19 effectively monitor her.

20           We are, as the government stated, we believe that  
21 there are positions that we could take, as we have, that would  
22 allow Ms. Bronfman the time outside of her one-bedroom  
23 apartment. The government obviously understands that point.  
24 But to have unfettered access to all of Manhattan all day long  
25 does not comport with the flight risk in this case.

1 THE COURT: I see. Well, as I stated previously,  
2 the Court is concerned that Ms. Bronfman is not the type of  
3 defendant in terms of the availability of means to depart the  
4 jurisdiction that most other people have. And assuming her  
5 good faith and all, at this time, a month down the road, two  
6 months down the road that all may change, depending on what's  
7 in discovery and what the circumstances are. I have no idea,  
8 not having seen any of that. But I think she has the  
9 capability, the financial capability, notwithstanding the very  
10 large sum money that's been placed by her as security that she  
11 could leave the jurisdiction.

12 But I am concerned that she's certainly entitled,  
13 while she's on bail, to be able to have physical exercise, see  
14 her friends who are not associated with the case in some way.  
15 And if it becomes apparent that she needs to get a health club  
16 membership be go to a health club for an hour and half a day,  
17 we'll talk about that later on.

18 But for the time being, I'm going to require that  
19 she be on home confinement subject to those three  
20 90-minute-a-week breaks that will be coordinated with pretrial  
21 services.

22 And I think that what's quite clear about New York  
23 City is it's a big place; Queens, Brooklyn and Manhattan,  
24 south of 96th Street, might as well be offering someone the  
25 opportunity to see the world, because you can certainly see

1 the world in Brooklyn, Queens and Manhattan, at least in terms  
2 of the city of people and the different communities, different  
3 types of eateries.

4 And I understand why she would want this, but I have  
5 a concern about her potential for flight. I also have a  
6 letter here, which I read, from a firm, a law firm in  
7 Philadelphia. I'm putting that aside and not considering that  
8 because I think it's not fair to Ms. Bronfman for me to start  
9 considering third-party submissions in connection with her  
10 bail.

11 MS. NECHELES: I appreciate that.

12 THE COURT: All right. And if -- let me put it this  
13 way: If after a month or two there is good reason to  
14 reconsider, I will reconsider. But for the time being, and  
15 subject to the three-day-a-week, 90-minutes-a-day exception  
16 and exception that pretrial might make for trips to a health  
17 club, for instance, for her physical health and mental health,  
18 I'm requiring that she remain at home for now.

19 And I would add that I also have a concern that all  
20 of these sureties were really not made aware of the suggestion  
21 that Ms. Bronfman be able to travel around the city during the  
22 day every day. And if I am going to reconsider at some point,  
23 I would want to bring back all the sureties, including  
24 Ms. Bronfman's mother, to hear from them about whether they  
25 want to continue the sureties in person in court. All right?

1 But I certainly will keep an open mind. All right?

2 MS. NECHELES: I appreciate that, Your Honor.

3 I would just mention that Ms. Bronfman does come  
4 regularly to our office, and has done so and has permission  
5 from pretrial, and there really has been no problem. She  
6 comes to our office. She is not being monitored in that time.

7 THE COURT: Why should she, she's with you? I  
8 assume that she comes to your office, you have your  
9 discussions and maybe you're ordering lunch from a nice  
10 restaurant.

11 MS. NECHELES: She eats much more carefully than I  
12 do, Your Honor.

13 THE COURT: But still, you could order carefully.  
14 And if she orders carefully, good for her.

15 Yes, ma'am.

16 PRETRIAL SERVICES OFFICER: Just to clarify, she is  
17 still being monitored, her location is being monitored, so we  
18 know --

19 THE COURT: Where she is. She's not being -- no  
20 one's watching her --

21 PRETRIAL SERVICES OFFICER: Correct.

22 THE COURT: -- at the conference table.

23 PRETRIAL SERVICES OFFICER: Correct.

24 THE COURT: No, I understand what it means. Okay.

25 All right, so there we are.

1 Next subject.

2 MS. NECHELES: So if I could address then the issue  
3 of her association.

4 THE COURT: Let's do that.

5 MS. NECHELES: So, Your Honor, the government, the  
6 cases, and I've read the cases, and I tried to quickly read  
7 the case cited by the government here. The cases are very  
8 clear that with respect to association, that putting a  
9 limitation on somebody's association, even in a criminal case  
10 before somebody has been convicted -- there's different case  
11 law that governs after conviction, but prior to any  
12 conviction, that's a serious infringement on someone's  
13 constitutional right, and it has to be justified on an  
14 individual basis; you know, with respect to each individual,  
15 with a compelling government reason.

16 What the government has cited here is -- and the  
17 cases what they say -- you know, the one case talks about, you  
18 know, I'm not associating with other -- with felons. And they  
19 know that could be a compelling reason.

20 But what the government is saying here is that  
21 Ms. Bronfman should not be able to associate even with people  
22 who want to associate with her: People who are her friends.  
23 People who are her employees. They're saying that employees  
24 should have to lose their job, even though they want to work  
25 for Ms. Bronfman, that her accountant should lose her job

1 because the government says they may call this person as a  
2 witness.

3 Not because Ms. Bronfman is alleged to be  
4 interfering with those people, but because they say that in  
5 the past, she has been involved in aggressive litigation.

6 Now, all of that litigation, every single aspect of  
7 it, was run by lawyers and was totally managed by lawyers. We  
8 are not talking about any letter or any action or any phone  
9 call ever done by Ms. Bronfman. We're talking about letters  
10 and litigation by lawyers, including a lawyer in Mexico, who I  
11 believe has said, I have read the letter, and what he has said  
12 to people is you are interfering with business relationships,  
13 and if you continue to do so, we will the -- this may be a  
14 criminal charge.

15 It's not -- I do not believe that there is a  
16 criminal charge against anybody in Mexico, but he has -- there  
17 have been ten years of fighting between people at NXIVM and  
18 people on the outside, with the criminal cases brought by law  
19 enforcement authorities against people who hacked into NXIVM,  
20 who stole material, who altered information on a computer.

21 Prosecutors have found this to be valid information.  
22 I know Your Honor doesn't have enough in front of you to make  
23 this decision, but I am telling you, there are cases and there  
24 is no question about that. Now -- that this has happened.

25 Courts have found, in civil litigation, that people

1 have committed serious wrongdoing against NXIVM. The  
2 mitigations may have been or may not have been, however, all  
3 of that will be litigated in this case, I doubt it, because  
4 the government wants to bring it all in this case, and we  
5 welcome it, because we believe there was serious wrongdoing,  
6 and we will be able to explain it.

7 But none of this has involved any threats or any  
8 misbehavior by Ms. Bronfman. No court has ever said she did  
9 anything inappropriate with any of these people. The only  
10 person who is saying that is a class action lawyer who is  
11 writing to Your Honor. We welcome him to tell us who he  
12 doesn't want her to associate and we will not -- she will not  
13 contact any of those people.

14 If there is an individual who is saying they don't  
15 want contact from Ms. Bronfman, we don't want to go there. We  
16 will stay away from that person. But what we are saying is  
17 that if somebody wants to be friends with Ms. Bronfman and  
18 asks to be friends with her and is seeking to have a  
19 relationship with her, there is just no legitimate reason for  
20 the Court or the government here to be saying she should not  
21 be associating with those people. They are -- I respectfully  
22 submit that the government here is attempting to use court  
23 process to isolate her and to push people into cooperating  
24 against her.

25 Depriving people of their livelihood --

1 THE COURT: That's a jump.

2 MS. NECHELES: Your Honor, depriving people of their  
3 livelihood and saying we want you to be a witness for us is  
4 wrong. That's a person who wants to work for her, who has  
5 said to us, her lawyer has said to us she wants -- the  
6 bookkeeper wants this job. If she can't talk to Ms. Bronfman,  
7 she can't have the job.

8 So we don't understand what the purpose of this  
9 would be, and we object to all of these restrictions. We do  
10 not object at all to a restriction of saying that if a person  
11 says they don't want to talk to Ms. Bronfman, that she not  
12 contact them.

13 And we don't have an objection to a restriction  
14 which says that she not contact people who are codefendants  
15 outside the presence.

16 But, Your Honor, I want to point out this: She's  
17 not charged in any of the DOS. She's not charged with even  
18 knowing about DOS. I think the government would agree she  
19 didn't even know about DOS until the newspaper articles  
20 started coming out. She's not charged with -- when government  
21 proposes that she can't associate with DOS members, they're  
22 secret. We don't know who the DOS members are. There is no  
23 list of DOS members. It was a secret organization.

24 She's not charged with any violence against them.  
25 She's not charged with being involved in any master/slave



1 relationship or anything like this. So we don't think that  
2 there is any valid government purpose for these broad  
3 restrictions.

4 THE COURT: Okay.

5 MS. PENZA: Your Honor, the government does believe  
6 that these are tailored to concerns that the government has in  
7 its specific case.

8 Your Honor, we charged a racketeering case. This is  
9 a criminal enterprise. There are unindicted coconspirators.  
10 There are also numerous witnesses.

11 Now the government is not in a position to identify  
12 who our witnesses are and what our conversations with various  
13 witnesses are, but Ms. Necheles, the person with whom  
14 Ms. Necheles is talking about is not here to speak for  
15 herself.

16 And for there to be the -- for the onus to be on  
17 potential witnesses to say to Ms. Bronfman, who has wielded an  
18 enormous amount of power in this organization that operates in  
19 specific ways that the government has alleged as part of its  
20 indictment, that relies on harassment, that relies on  
21 intimidation, for it to be the onus of the potential witnesses  
22 to say Ms. Bronfman I don't want to speak to you, that's  
23 inappropriate, Your Honor. And this is not an unusual  
24 condition.

25 But essentially here because of -- because the case

1 is unique, the government was fashioned -- was attempting to  
2 fashion a way that would be a proxy for potential witnesses.  
3 And, in fact, here there are many ways in which Ms. Bronfman's  
4 constitutional rights are -- that it is now, we tailored it,  
5 to protect Miss Bronfman's constitutional rights.

6 So, for example, there were four individuals who  
7 Ms. Necheles has offered, since Ms. Bronfman was indicted,  
8 that she wanted to speak to. Three of those the government  
9 agreed to. And so in light of that, Your Honor, we believe  
10 that this is a provision that should stand and is necessary in  
11 order to protect the integrity of the trial process.

12 MS. NECHELES: Your Honor, can I add a few things?

13 First off, NXIVM is no longer in business. So to  
14 extent that they say NXIVM was harassing, it's no in business,  
15 it's not operating at this point.

16 We agree we will not -- Ms. Bronfman will not sue  
17 anybody. If they're concerned about aggressive litigation,  
18 she will not sue anybody with respect to NXIVM while this case  
19 is pending. So that any --

20 THE COURT: If it doesn't exist, why would she sue  
21 anybody?

22 MS. NECHELES: That's the only thing she  
23 supposedly -- the only way she supposedly harassed anybody.

24 And I am saying that one of these people, who they  
25 have identified came forward and said she wants to be a

1 associating with Ms. Bronfman, other people have told me that.

2 This is a lot of people they are talking about. And  
3 when they talk about the stripe path and that the she should  
4 have nothing to do with people on the stripe path, there were  
5 5 to 700 people who have gone through that, and 300 people  
6 currently. There's a lot of people they are talking about.  
7 These are not all potential witnesses.

8 THE COURT: But if they are potential witnesses,  
9 they would be meeting -- if possible, they would be your  
10 witnessed and they would be meeting with you. They don't need  
11 to meet with Ms. Bronfman in order to be available to her to  
12 assist you with your case.

13 MS. NECHELES: Right. We are talking about two  
14 different things. And I don't think she will be contacting  
15 all these people.

16 I'm talking about whether she can be in contact with  
17 the people who are her friends, and employees, and people she  
18 has associated with for many years and who are not alleged to  
19 have done anything criminal, have not been indicted, and who  
20 are her friends.

21 What is the valid restriction, the compelling  
22 government interest in preventing her from associating with  
23 friends as opposed to an employee and people who want to  
24 associate with her, people not alleged to have been involved  
25 in the criminal activity? It's a separate question of us

1 contacting.

2 THE COURT: If she may friends she went to college  
3 with. I don't think we're talking about her college friends.

4 MS. NECHELES: We're talking about her NXIVM  
5 friends. She's been involved --

6 THE COURT: We're only talking the NXIVM people, and  
7 I'm sure that a person who has, over the course of her life,  
8 had many, many friends and acquaintances has many friends and  
9 acquaintances who have absolutely no connection with any of  
10 these entities; with stripe path, with NXIVM, with DOS.

11 And really, I wanted to go over what is proposed on  
12 page 3 in the government's letter to see exactly what the  
13 problem is.

14 Is what you're proposing, counsel, what's, in  
15 effect, the second paragraph under Roman numeral II?

16 MS. PENZA: Yes, Your Honor.

17 THE COURT: All right, so let's just go over it.  
18 All right?

19 The first item is the defendant may not directly or  
20 indirectly associate or have contact with, except in presence  
21 of her attorneys, current or former employees or independent  
22 contractors of or for NXIVM, including any and all affiliated  
23 entities current -- current entities.

24 That's the first. That's the first limitation.  
25 What's the problem with that?

1 MS. NECHELES: So many of those people are her  
2 friends, close friends, and her accountant is one of those  
3 people. Her current accountant is one of those people. A  
4 former -- a current -- a former employee of NXIVM and, in  
5 fact, a current employee, someone who is in charge of trying  
6 to get tax returns and things filed for NXIVM.

7 This is a person who has said to us, whose attorney  
8 has said she wants to continue to have this job.

9 THE COURT: All right, stop for a minute.

10 What about the accountant? I mean because that  
11 seems to be the claim being made as to that issue.

12 MS. PENZA: So, Your Honor, the government's  
13 position as to the accountant is that it is inappropriate for  
14 her to continue being the accountant.

15 This is an accountant who has the wherewithal to get  
16 a new job. That is not going to be a concern for the  
17 accountant. I understand the accountant may want to have the  
18 immediate job that's available, but that job has not been able  
19 available for the past several weeks since, and that has been  
20 fine.

21 And then in addition, here, that accountant, in  
22 particular, is intimately involved. And we're talk about  
23 potential witnesses. This one charged conduct in our  
24 indictment where the accountant was the accountant during the  
25 time period where there's alleged to have been improper

1 financial transactions.

2 So the government has a very specific concern  
3 regarding this accountant continuing to communicate with  
4 Ms. Bronfman.

5 Now, that being said, Your Honor, the government has  
6 stated that it has no objection to -- my understanding is  
7 right now there are two accountants for Ms. Bronfman. And  
8 that indeed over the past -- since Ms. Bronfman's arrest,  
9 there actually has been -- the accountant at issue has been  
10 doing some work for Ms. Bronfman, with the other accountant as  
11 an intermediary. And so it is not an infeasible thing for  
12 this accountant to continue doing work, if it is so important  
13 that she continue doing that work --

14 THE COURT: Without direct contact.

15 MS. PENZA: Without direct contact.

16 MS. NECHELES: It's not the same work. She can't  
17 have an employee she can't talk to. Especially an accountant.  
18 It's basically her bookkeeper.

19 THE COURT: She should find somebody else. Let her  
20 find somebody else.

21 MS. NECHELES: We do not believe the government has  
22 stated a reason --

23 THE COURT: That's not a reason?

24 MS. NECHELES: No. There's many, many cases where  
25 the government -- there's many cases involving corporations

1 where the government can't just come in and say somebody is  
2 charged here so you have to fire these other people. You  
3 can't hire -- you can't -- you have to fire your secretary  
4 because she may be a witness.

5 This happens all the time. The government doesn't  
6 get to come in and say we've brought a criminal case, so you  
7 have to fire that person. They don't have the right to do  
8 that. There is no allegation of witness tampering here or  
9 anything improper ever by Ms. Bronfman. I don't think that  
10 they have the right to do this, to come in and say fire your  
11 employee. This woman who was never charged with anything, she  
12 gets to lose her job because we, the government, say so. I  
13 don't think they have the right to do that.

14 THE COURT: And?

15 MS. PENZA: Your Honor, the defendant has not cited  
16 any law as to what she is currently stating.

17 THE COURT: She can cite some law and send it to me.  
18 Send me some law.

19 MS. NECHELES: Your Honor, I will.

20 THE COURT: I mean, you know --

21 MS. NECHELES: I'll send you --

22 THE COURT: -- in this room I've heard everything so  
23 you can add that to the list.

24 MS. NECHELES: Yes, but I believe that the cases  
25 that we cited, which talk about how there has to be a

1 compelling government reason.

2 I mean I think that if the government is asking Your  
3 Honor to cause a woman to lose her job --

4 THE COURT: No, that's not what they said at all.  
5 No. No. No.

6 MS. NECHELES: That is what they are saying.

7 THE COURT: Oh, no, no, no. Oh, no.

8 What they said was there would be no direct contact,  
9 but there could be contact through another person so that all  
10 of the information necessary to fulfill the defendant's  
11 obligations to file tax returns and review financial documents  
12 can be met with the intermediary, and since she already has  
13 another accountant, it can be done that way.

14 MS. NECHELES: What I heard the government say --

15 THE COURT: They're saying that she's a friend. The  
16 friend part is the part that's the problem. It's not that the  
17 accountant part that's the problem here. It's the friend  
18 part. If she wants to hang out, the answer is "no".

19 MS. NECHELES: No, let me be clear. The problem is  
20 we cannot have an employee who Ms. Bronfman cannot talk to.  
21 She cannot spend her life trying to go around finding someone  
22 else. It just won't work. The government's first comment was  
23 she with find another job, not a big problem. Then they said,  
24 well, she can set up this other. This can't happen, Your  
25 Honor, it's not feasible.



1 THE COURT: All right, send me a memo about why I --

2 MS. NECHELES: I will, Your Honor. With respect to  
3 friends who are also in this group.

4 THE COURT: On that, did you have something to add?

5 MS. PENZA: Yes, Your Honor, I just wanted to be  
6 very clear. There is another bookkeeper in place. So this  
7 isn't a matter of Ms. Bronfman going out to find one. There  
8 is another one in place currently who could act, and has been  
9 acted over the past six weeks as the intermediary. So this is  
10 not some pie-in-the-sky proposal by the government, and it is  
11 specifically in order to narrowly tailor this to protect  
12 Ms. Bronfman's rights.

13 MS. NECHELES: The only reason we've been doing that  
14 way in this is unbelievably difficult way is because of this  
15 provision in the bail. We can't continue this forever. You  
16 have to double pay to get one person's job done. You need two  
17 people now to do one person's job. It's just not feasible.

18 So this person will lose her job because of the  
19 government. And I don't think the government has the right to  
20 do that, to come in and say that we should put this kind of  
21 restriction on a woman who's just trying to earn a living  
22 because the government thinks maybe they might be interested  
23 in her as a witness in this case.

24 THE COURT: Well, what they're doing, essentially,  
25 is conflating a friendship with a business obligation.

1 MS. NECHELES: No, Your Honor, this is not a friend.  
2 I'm talking about two separate things.

3 I'm talking about a business that an employee, who  
4 now the government is saying you need a second employee to  
5 interact with the first employee because you can't speak to  
6 them. That, she's not going to pay twice for the same work.  
7 She has been doing it for the last six weeks so that we can  
8 raise this with Your Honor, but it just makes no sense.

9 But this is not a friendship. This is an employee  
10 situation. There is a separate issue I want to raise with  
11 respect to friends, who fall within this category.

12 THE COURT: Well, we're dealing with the bookkeeper.  
13 This is a bookkeeper we're talking about?

14 MS. PENZA: Yes, Your Honor.

15 THE COURT: This is a CPA or just a bookkeeper?

16 MS. NECHELES: I don't know if she is also a CPA.

17 But she is a person who handles -- her bookkeeper.  
18 She is a person who handles her financial affairs, someone who  
19 normally she will be talking to 10, 15, 20 times a day. And  
20 instead now she has to call somebody else to call the  
21 bookkeeper to find out, you know, it just doesn't work.

22 MS. PENZA: Your Honor, I just want to be clear.

23 THE COURT: It's the -- the issue really is the  
24 status of the bookkeeper in the overall enterprise  
25 potentially, all right? And that's whatever it is. That's

1 the problem. That's the situation.

2 I don't know that there's very much I can do to help  
3 you with that. If she loses her job because Ms. Bronfman was  
4 using her to do things that were not appropriate, allegedly,  
5 if that's the case, is that what's being alleged?

6 MS. PENZA: Yes, Your Honor.

7 I'm alleging it, Your Honor.

8 MS. NECHELES: I would ask for specifics because  
9 this is --

10 THE COURT: We're not trying the case on a bail  
11 application.

12 MS. NECHELES: Yes, but the government needs to give  
13 a compelling reason, they should say what --

14 THE COURT: You send me a memo --

15 MS. NECHELES: Okay.

16 THE COURT: -- about why I have to do this the way  
17 you want me to do it.

18 MS. NECHELES: I just think it's required --

19 THE COURT: There are solutions. If this can't be  
20 worked out, Ms. Bronfman can have telephone conversations with  
21 you from the MDC.

22 Don't get me going. I'm not here to provide a  
23 solution that's unworkable. I'm trying to provide a solution  
24 that's fair, equitable, and has the minimal problem for your  
25 client. But we're going into such detail here, you want --

1 you want a lot.

2 MS. NECHELES: Your Honor, so are we. I mean,  
3 respectfully, I hear what you're saying and I understand how  
4 frustrating and difficult this can be.

5 THE COURT: It's not frustrating, I'm just telling  
6 you it's going to be my way or she goes to the MDC.

7 MS. NECHELES: Your Honor, it's always your way.

8 THE COURT: It's going to be my way in the end.

9 MS. NECHELES: Yes, it is.

10 THE COURT: So, you know, anything else on this  
11 point?

12 MS. PENZA: Not on that point, Your Honor.

13 THE COURT: Send me a memo. I'll consider anything  
14 you send me, all right? Case law. I'm happy to consider  
15 anything you have to say, believe me.

16 MS. NECHELES: I'll send you a memo on this whole  
17 issue, on her friends --

18 THE COURT: We haven't gotten to the friends. Now  
19 you're ahead of us. You're getting ahead of us.

20 Let's talk about the friends.

21 MS. NECHELES: Your Honor, Ms. Bronfman has good  
22 friends, very close friends for a number of years who were  
23 what are called "independent contractors". NXIVM was a  
24 business. It was a business that had about \$7 million annual  
25 revenue. And in the course of it, many of the people who

1 worked -- associated were working, were independent  
2 contractors. She was -- Ms. Bronfman as involved in it, and  
3 was close friends with many of the people.

4 These people are not alleged -- have not been  
5 indicted, have not been charged with any crime. They are her  
6 friends. We do not understand why she should be restricted  
7 from speaking with them.

8 MS. PENZA: Your Honor.

9 THE COURT: This is the second application.

10 MS. PENZA: Yes.

11 MS. NECHELES: No, we're still on the first.

12 THE COURT: No, wait a minute. I haven't read about  
13 friends.

14 MS. NECHELES: Current or former employees or  
15 independent contractors of or for NXIVM.

16 THE COURT: I see.

17 So you're saying that this category, these are her  
18 friends, some of them.

19 MS. NECHELES: Some of the people are friends.

20 MS. PENZA: Your Honor, the government is attempting  
21 to try and delineate which people in this organization and,  
22 yes, we understand it was a large organization and that's why  
23 we have not said -- our initial position was members of NXIVM,  
24 which the defendant, which I believe was a semantic argument,  
25 said that there were no actual members of NXIVM.

1           That being said, the government has made attempts to  
2 narrow, narrow this provision. We have had no meaningful back  
3 and forth with defense counsel about how they think this could  
4 be effectively narrowed.

5           Knowing that, we believe that this -- these  
6 categories of people represent a proxy of people who we  
7 believe could either be unindicted coconspirators, or  
8 potential witnesses, because of how long they've been with the  
9 organization, because of their commitment to the organization,  
10 because of their participation through other members; either  
11 being members of the enterprise, or being directed by other  
12 members of the enterprise to do certain things on behalf of  
13 the enterprise. So that's what the government's position is  
14 as to these conditions.

15           That's how we've tried to structure it. We are open  
16 to other ways of structuring it, but we have had no meaningful  
17 feedback as to how it can be differently narrowed to take into  
18 account those considerations.

19           MS. NECHELES: Your Honor, what we --

20           MS. PENZA: And so what we've suggested, for  
21 example, we have a reasonable exception point. And we have  
22 made reasonable exceptions already.

23           But what I am afraid, Your Honor, is that the people  
24 who Ms. Bronfman actually wants to speak to are the people at  
25 the highest reaches of the organization who are unindicted

1 coconspirators, and that is honestly, Your Honor, what is  
2 sounds like to me, or people who are very much witnesses to  
3 these crimes.

4 MS. NECHELES: Your Honor, can I just address this  
5 whole witness issue. I mean, I would think the government  
6 would be happy for her to speak to witnesses because then they  
7 can find out what she has to say.

8 I don't really understand this. We are not out  
9 there, she is not out there seeking to find out information or  
10 interfere, and there is no claim that she is seeking to  
11 interfere with anybody, any witness, or has done anything to  
12 interfere with any witness.

13 You know, if the government -- we have proposed what  
14 we believe would be restricted, you know, a fair way to  
15 restrict. Anybody who says they don't want to speak to her,  
16 we don't want to speak to.

17 THE COURT: Unfortunately, unfortunately, that --  
18 the problem is that Ms. Bronfman has, because of her wealth  
19 and her status, a great deal more leverage over other people  
20 than a garden variety defendant in a case in the Eastern  
21 District.

22 It's just a fact that she is who she is. And so if  
23 she's going to talk to somebody, she's talking to somebody  
24 with the benefit of her large wealth behind her, and some  
25 people, potentially, could be intimidated by this, including

1 some of the people who have been involved in these  
2 organizations. So, I mean, that's your problem.

3 The problem is that she isn't your ordinary garden  
4 variety defendant. She's a person of substantial wealth and  
5 high social standing, and so that's -- that's the difficulty  
6 that we're grappling with here.

7 It's not that -- the Court doesn't want to limit her  
8 from being with friends, but these are people with whom she  
9 was in business, if you will, some of them, and if there's  
10 someone in this category that you think is really more a  
11 friend than anything else and really isn't of concern to the  
12 government, then all you have to do is call the government and  
13 say she wants to talk to her old friend from -- you know, that  
14 she knows from Dalton, or wherever she went to high school,  
15 and it'll be pretty clear whether this is someone that the  
16 government is -- that, you know, has down as a potential  
17 witness.

18 I just don't -- how many people does she need to  
19 talk to in a given day? I mean, we're talking about -- I  
20 don't understand this.

21 MS. NECHELES: Right now --

22 THE COURT: Why are we even having this discussion?

23 MS. NECHELES: Because the government has proposed  
24 this restriction. Right now -- I don't think that it's right  
25 to require the defendant to come forward and say to the



1 government, These are the people I'm the closest with, when  
2 they are saying you committed crimes with people so now we're  
3 giving them leads in terms of discovery. I don't think it's  
4 right.

5 THE COURT: Maybe she won't be able to have -- to  
6 spend time with her closest friends from these organizations  
7 for the next few months until we square this away. You know,  
8 that does happen.

9 MS. NECHELES: Although, I don't know of cases  
10 really where that happens, Your Honor. I mean these kind of  
11 restrictions, I have not seen a single case where this kind of  
12 restriction was upheld or --

13 THE COURT: Upheld?

14 MS. NECHELES: Yeah, I think --

15 THE COURT: Imposed. Try imposed. Try organized  
16 crime cases.

17 MS. NECHELES: Right, where people are involved in a  
18 criminal enterprise, where NXIVM has not been named as a  
19 criminal enterprise.

20 THE COURT: Well, maybe not. But I have a letter  
21 here, that I'm not using today, from a lawyer in Philadelphia  
22 that says a lot of stuff that is very disturbing and if we  
23 credit it, which I'm trying to avoid doing --

24 MS. NECHELES: A class action lawyer who wants to  
25 sue --

1 THE COURT: I don't care what kind of lawyer he is.

2 MS. NECHELES: I don't think the Court can be  
3 used --

4 THE COURT: I'm not using it, but I'm saying that  
5 we're going to have an investigation when doing -- when  
6 handling a bail application and having a trial or bail  
7 application. That's pretty far afield from what we do in this  
8 courthouse.

9 MS. NECHELES: And, Judge, I'm trying to be  
10 reasonable. I'm saying to the government, anybody, you tell  
11 us who you don't want, specific names, who you think may be a  
12 witness, may be an unindicted coconspirator, whatever, and if  
13 we have an objection to those people, we'll take it up with  
14 you. But right now it's just like everybody.

15 The next category, current or former members of DOS.  
16 DOS is secret organization. We don't know who those people  
17 are. So these categories are so broad, Your Honor, that it's  
18 really oppressive, and so that's what we're objecting to.

19 THE COURT: Well, if you don't know whether someone  
20 is part of an organization, you wouldn't be violating the  
21 terms of the bail.

22 If Ms. Bronfman talked to someone that she knew just  
23 socially, with whom she never had any business in this, with  
24 NXIVM or any of these activities, she's just a friend who she  
25 met through some social organization which she was a part, or

1 she met at college, or that she met some other way.

2 MS. NECHELES: Correct.

3 THE COURT: I don't think there are -- I don't think  
4 that's really the problem.

5 The problem is that she has, apparently, allegedly,  
6 many contacts who were -- her prime contacts are people who  
7 were part of this organization. That's what this is about.

8 MS. NECHELES: Yes.

9 THE COURT: It's not about her college friends.  
10 It's not about her high school friends. It's not about, you  
11 know, the people she saw when she spent her summers on the  
12 Vineyard, or wherever she went.

13 MS. NECHELES: You're right, it's about her friends,  
14 Your Honor, for example.

15 THE COURT: Right.

16 MS. NECHELES: And that's the final category, people  
17 who are on the stripe path.

18 These are people who were -- hundreds of people who  
19 were involved with NXIVM who I don't think the government is  
20 going to have hundreds of witnesses here, you know.

21 THE COURT: I hope not.

22 MS. NECHELES: And so I think that's what the issue  
23 is, you know, is that the government should have the burden of  
24 saying these are the people you should not associate with,  
25 name the specific people. And it could be everybody

1 represented by that letter. I don't care. If somebody  
2 doesn't want her to contact them, we don't want her to have  
3 anything to do with them. We're not looking for problems.  
4 We're looking for her to be able to talk to friends under this  
5 unbelievably stressful period in her life. That's all we're  
6 really asking for, Your Honor.

7 MS. PENZA: Just briefly, Your Honor.

8 So I just want to make clear a few points. So,  
9 number one, the stripe path again, the government was  
10 attempting to come up with a reasonable proxy with no  
11 reasonable feedback from defense counsel. The government does  
12 not believe it is reasonable to have to proffer who we believe  
13 in our continuing investigation may be an unindicted  
14 coconspirator or a potential witness.

15 We would be willing to talk about certain levels of  
16 the stripe path, which I certainly didn't want to burden Your  
17 Honor with, but we were not able to have that conversation  
18 with the defendant's attorneys.

19 I do want to state, Your Honor, that I believe that  
20 Ms. Necheles is understating Ms. Bronfman's knowledge of  
21 members of DOS.

22 While the government has not alleged that  
23 Ms. Bronfman herself was a member of DOS, there was a  
24 significant effort in the aftermath of DOS being revealed, not  
25 just publicly in the newspaper articles and The New York

1 Times, but within the NXIVM community, once DOS was revealed;  
2 efforts by Ms. Bronfman to gather information about  
3 prospective victims, speaking disparagingly about certain DOS  
4 victims.

5 And so the idea that Ms. Bronfman has no  
6 understanding, given her status within this organization,  
7 given her closeness to Mr. Ranieri, giving her putting a  
8 letter up stating her support of NXIVM in the aftermath of the  
9 original New York Times article. To say she that has no  
10 concept of who may be members of DOS is certainly understated.  
11 So the government also wanted to put that on the record.

12 MS. NECHELES: Just to be clear, that's really not I  
13 said. I said that it was a secret society. We don't who were  
14 members. She was not a member, as the government has said  
15 now, and, yes, some people were publically identified as  
16 members or identified within NXIVM, and she knows who those  
17 people are. I didn't say she knows any members, but I don't  
18 know who are the members.

19 THE COURT: Anything else on any of this?

20 MS. PENZA: No, Your Honor. No, we stand by our --

21 THE COURT: All right, I'm going to -- until further  
22 notice, and subject to appeal, I'm imposing the following  
23 restriction, as set forth in the government's letter:

24 The defendant may not directly or indirectly  
25 associate or have contact with, except in the presence of her

1 attorneys, current or former employees, or independent  
2 contractors, of or for NXIVM, including any and all of the  
3 related entities; current or former members of DOS, or with  
4 any individual who's currently or was formerly on the stripe  
5 path, subject to reasonable exceptions agreed upon by the  
6 parties.

7 I will add that with respect to members, current and  
8 former members of DOS, this will include those current and  
9 former members of DOS about whom whose status she is aware of.

10 So if there's somebody out there and she has no idea  
11 this person is a member of DOS, she wouldn't be in violation  
12 of her bail requirements if she had a conversation or was  
13 friendly with such a person.

14 So I mean I'm not going to set up rules that she  
15 couldn't possibly follow because she didn't know about it.

16 Do you understand that, Ms. Bronfman? Do you  
17 understand that description, set of descriptions?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Thank you.

20 All right, what else do we have for today?

21 So when can you have -- how about you provide the  
22 Court with a legal memorandum in the next two weeks.

23 MS. NECHELES: That's fine, Your Honor.

24 THE COURT: All right, and then a week later any  
25 reply.

1 MS. PENZA: Thank you, Your Honor.

2 MS. NECHELES: We wrote Your Honor a letter about  
3 discovery.

4 THE COURT: Discovery, oh, one of my favorite  
5 subjects.

6 You read the discovery letter?

7 MS. PENZA: I did read the letter, Your Honor.

8 THE COURT: So what's the story about discovery?

9 MS. PENZA: Your Honor, we believe that the  
10 defendant's letter is premature. The government has been  
11 actively complying with our obligation. We requested a  
12 5 terabyte drive from the defendant last week. We have not  
13 received that drive yet. In the interim, we have been  
14 providing substantial discovery.

15 This is a case where we estimate -- we now have an  
16 estimate that is approximately 12 terabytes worth of data.  
17 We -- it is a -- we intend file a case update letter with the  
18 Court prior to our next appearance before Your Honor with the  
19 other defendants.

20 THE COURT: When is that?

21 MS. PENZA: I believe it's September 13th, Your  
22 Honor.

23 THE COURT: Right.

24 MS. PENZA: But I don't have my phone in front of  
25 me.

1           So we will file something in advance of that. But  
2 the government can assure Your Honor that we are proceeding as  
3 expeditiously as possible.

4           We are in the process of seeking to retain vendors  
5 to enable us to proceed more quickly, but as it stands, we are  
6 certainly doing the best we can and have been in communication  
7 with defense counsel about things that we need in order to  
8 allow us to provide discovery.

9           So we don't believe that there are any issues that  
10 are ripe for Your Honor to rule on at this stage.

11           THE COURT: I'm just thinking in terms of the  
12 January 7th trial date, and so whatever needs to be done to  
13 expedite the providing of discovery to the defense is very,  
14 very important.

15           MS. PENZA: And we do understand that, Your Honor.  
16 There are actual technological limitations in terms of -- we  
17 would love to provide it as quickly as possible, but it takes  
18 days and days simply to transfer data from one place to  
19 another and then to the defendants. And there's nothing  
20 really the government can do about that.

21           In addition, there is a firewall process set up  
22 regarding certain materials, and so we will certainly -- we  
23 are certainly moving forward as quickly as possible. We took  
24 Your Honor's point and raised it at our last conference as  
25 well and we understand that. We do believe that we may raise



1 the complexity of the case in our case update letter.

2 MS. NECHELES: Your Honor.

3 THE COURT: What does that mean?

4 MS. PENZA: We may be seeking to have the case  
5 designated as a complex case officially, given how much data  
6 that there is in this case.

7 MS. NECHELES: Your Honor, I think the case update  
8 letter may actually solve the issue. I mean, our concern is  
9 we have not gotten the 5 terabyte drive because the government  
10 requested that we have some sort of encryption device also  
11 that we then had to order, that I think we just got yesterday  
12 from Amazon and we were sending the drive down today.

13 But I do believe that the production -- the searches  
14 that will have to be done and the production may just take a  
15 long time. And that is why we want an outline of what is  
16 there and what is coming because Your Honor has set a firm  
17 trial date, and we're concerned that we will not have the time  
18 to review the material.

19 And I am not faulting the government, I'm just  
20 saying that I hear what they're saying in terms of technology,  
21 and even if they're working as quickly as they can work, there  
22 are steps that have to be gone through.

23 They asked us if we were willing to waive some of  
24 our rights to make things quicker. We are not willing to  
25 waive our rights to make things quicker. We want the search

1 warrants to be executed in the way they should be and not  
2 given to other people if they don't have the right to them,  
3 and I know the government will respect that. And so it might  
4 take longer. But we just want to be able to all know  
5 realistically what the time frame is, you know, so that we can  
6 talk realistically about a date, which Your Honor set a date,  
7 a firm trial date, which we are concerned that we will not  
8 have the materials with enough time to be able to review them  
9 for that trial date.

10 THE COURT: Well, and that will bring us back to the  
11 question of whether this case should be designated as a  
12 complex case and whether the trial date would have to be  
13 changed, which the Court is very much opposed to, unless a  
14 good cause is shown for it.

15 MS. NECHELES: And that's why I asked that, and  
16 maybe the discovery update will tell us. That's why I asked  
17 that we get an index of what needs to be produced in a  
18 realistic timetable, because I believe a realistic timetable  
19 is going to take us well into December for when things will be  
20 produced.

21 Because I do not believe that search warrants have  
22 even been executed yet, given the volume of -- I mean while  
23 the initial material may be seized, I don't think the  
24 government has had the time to go through the computers. You  
25 said there were 60 devices. That's a lot of work. So I don't

1 know that they have had the time to go through all of that and  
2 then start producing things; you know, finish their search,  
3 which they have to do to be able to produce things to us, the  
4 entirety.

5 And I know that there are issues -- you know, they  
6 have a firewall with attorney/client things being reviewed  
7 that that is, undoubtedly, another factor that is going to  
8 slow things down a little bit. So I believe that we are -- it  
9 is optimistic to think that discovery will be finished  
10 producing by December.

11 And then there's always issues of uploading the  
12 materials on our side, getting it in a form that is  
13 searchable, and then actually searching and reviewing 60  
14 devices' worth of materials. And so I feel like if this  
15 were -- if an index were sent out and a realistic timetable  
16 were set before Your Honor, we could all set something that --  
17 you know, we could see whether this January trial date was at  
18 all possible and set a realistic trial date so that we can all  
19 block that time off our schedules, as Your Honor wishes.

20 THE COURT: I think you all should talk about that  
21 and come back to me on September 13th, and that way we can be  
22 in a better position, if we need to address it. Okay?

23 MS. PENZA: Thank you, Your Honor.

24 MS. HAJJAR: Thank you, Your Honor.

25 MS. NECHELES: Anything else from the government?

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1 MS. PENZA: Not from the government, Your Honor.

2 THE COURT: Anything else from the defense?

3 MS. NECHELES: No.

4 THE COURT: All right, we will see you in September.

5 MS. PENZA: Thank you, Judge.

6

7 (Whereupon, the matter was concluded.)

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9 \* \* \* \* \*

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12 I certify that the foregoing is a correct transcript from the  
13 record of proceedings in the above-entitled matter.

14 s/ Linda D. Danelczyk

August 22, 2018

15

LINDA D. DANELCZYK

DATE

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